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572, 28 Atl. 954; *Morning Star Lodge* v. *Hayslip*, 23 Oh. St. 144. And societies whose chief purpose is mutual benefit or mutual insurance are not regarded as charities. *Young Men's Protestant, etc. Society* v. *City of Fall River*, 160 Mass. 409, 36 N. E. 57; *Supreme Lodge* v. *Board of Review of Effingham County*, 223 Ill. 54, 79 N. E. 23. But conceding that the fraternal order in the principal case is a charity, its property is not exempt from taxation unless it be "used exclusively for charitable purposes." If part of a building is rented for business uses, that part is taxable even though the profits are devoted to charity. *City of Indianapolis* v. *Grand Master*, 25 Ind. 518; *Massenbury* v. *Grand Lodge*, 81 Ga. 212, 7 S. E. 636. Nor is a building exempt if the charity itself uses it for profit. *American Sunday School Union* v. *City of Philadelphia*, 161 Pa. St. 307, 29 Atl. 26; *Sisters of Peace* v. *Westervelt*, 64 N. J. L. 510, 45 Atl. 788. On the other hand, the fact that some income is derived from the use of the property does not render it taxable, if the use be a mere incident of the charitable purpose for which it is maintained. *House of Refuge* v. *Smith*, 140 Pa. St. 387, 21 Atl. 353; *Franklin Square House* v. *City of Boston*, 188 Mass. 409, 74 N. E. 675. But it would seem that the use in the principal case does not fall into this latter category. *Cf. Trustees of Green Bay Lodge* v. *City of Green Bay*, 122 Wis. 452, 100 N. W. 837; *Lacy* v. *Davis*, 112 Ia. 106, 83 N. W. 784.

TAXATION — PROPERTY SUBJECT TO TAXATION — TAXATION OF FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE. — Under a constitutional provision, a Minnesota statute assessed on an express company, organized in New York and engaged in interstate commerce, "a tax of six per cent upon its gross receipts for business done between points within this state, in lieu of all taxes upon its property." *Held*, that this is not void as a regulation of interstate commerce. *United States Express Co.* v. *State of Minnesota*, U. S. Sup. Ct., Feb. 19, 1912.

An Oklahoma statute assessed on a non-resident express company engaged in interstate commerce a tax of three per cent on such proportion of its gross receipts, "from every source whatsoever," as the portion of its business done within the state bore to the whole of its business, "in addition to the taxes levied and collected upon an *ad valorem* basis upon the property and assets of such corporation." *Held*, that the tax is void as a regulation of interstate commerce. *Meyer* v. *Wells Fargo & Co.*, 32 Sup. Ct. 218.

The above two cases strikingly illustrate the theory of the United States Supreme Court in cases of this sort. For a discussion of the principles involved, see 25 HARV. L. REV. 95.

TRUSTS — CREATION AND VALIDITY — VOLUNTARY DECLARATION OF TRUST IN LAND WITHOUT TRANSMUTATION OF POSSESSION. — The defendant, being owner of land, made a voluntary written declaration of trust of it in favor of another. *Held*, that this creates an enforceable trust. *Schumacher* v. *Dolan*, 134 N. W. 624 (Ia.).

In 1811 Lord Eldon, apparently without regarding the previous law, enforced a voluntary declaration of trust of a chose in action. *Ex parte Pye*, 18 Ves. Jr. 140. This case was long regarded as anomalous. See *Scales* v. *Maude*, 6 De G. M. & G. 43, 51; *Jones* v. *Lock*, L. R. 1 Ch. 25, 28; 9 HARV. L. REV. 213. But on its facts it is fairly defensible. A chose in action is in general incapable of delivery, and a voluntary assignment of a chose in action was not enforceable in equity, so that by this means alone could there be a valid gift of a chose in action. See *Bond* v. *Bunting*, 78 Pa. St. 210, 213, 218. The doctrine was soon extended, however, to voluntary declarations of trust in tangible property. *Thorpe* v. *Owen*, 5 Beav. 224. And the text-books with uniformity make no distinction between lands and personalty. See LEWIN, TRUSTS, 12 ed., 71, 72; 1 PERRY, TRUSTS AND TRUSTEES, 6 ed., § 96; 3 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 997. But no English case has been found applying this doctrine to freeholds. *Con-*

tra, DOCTOR & STUDENT, Dialogue II, ch. XXIII. But *cf. Steele* v. *Waller*, 28 Beav. 466. The better reasoned cases in this country have refused to apply the doctrine to land. *Pittman* v. *Pittman*, 107 N. C. 159, 12 S. E. 61; *Thompson* v. *Branch*, Meigs (Tenn.) 390. *Cf. Yarborough* v. *West*, 10 Ga. 471. The principal case, however, has two square decisions to support it. *Carson* v. *Phelps*, 40 Md. 73; *Leeper* v. *Taylor*, 111 Mo. 312, 19 S. W. 955. *Cf. Lynch* v. *Rooney*, 112 Cal. 279, 44 Pac. 565. And that this will become the recognized rule in this country seems probable. See *Crompton* v. *Vasser*, 19 Ala. 259, 266; *Reilly* v. *Whipple*, 2 S. C. 277, 282.

USURY — FORFEITURES — FEDERAL STATUTE: LIMITATION OF ACTION TO RECOVER PENALTY. — A statute provided that in case a greater than lawful rate of interest has been paid, "the person by whom it has been paid . . . may recover back . . . twice the amount of interest thus paid, . . . provided such action is commenced within two years from the date when the usurious transaction occurred." Under this statute the plaintiff sued to recover twice the amount of money he had paid to the defendant, a national bank, as unlawful interest, more than two years before the bringing of the action. The principal debt had been paid within two years before the bringing of the action. *Held*, that the plaintiff cannot recover. *McCarthy* v. *First National Bank*, 32 Sup. Ct. 240, affirming 23 S. D. 269, 121 N. W. 853.

Since the right of action is based upon the payment of unlawful interest, this is clearly the "usurious transaction" referred to by the statute. *Daingerfield National Bank* v. *Ragland*, 181 U. S. 45, 21 Sup. Ct. 536. *Cf. Pritchard* v. *Meekins*, 98 N. C. 244, 3 S. E. 484. Some courts have held that the cause of action does not accrue until a greater amount than the principal debt and legal interest has been paid, on the ground that the law will not apply payments so made to the illegal interest and that the creditor has a *locus pœnitentiæ* until the excess amount has been paid. *First National Bank* v. *Denson*, 115 Ala. 650, 22 So. 518. *Cf. McBroom* v. *Scottish Mortgage, etc. Co.*, 153 U. S. 318, 14 Sup. Ct. 852. But there seems to be no warrant for an application of payments by the law to a purpose inconsistent with the appropriation the parties have themselves made. So in an action by a national bank to recover the principal, the debtor cannot be credited with the payments of usurious interest he has already made. *First National Bank* v. *Childs*, 133 Mass. 248; *Haseltine* v. *Central Bank of Springfield*, 183 U. S., 132, 22 Sup. Ct. 50. Nor is there any reason for a *locus pœnitentiæ* after the act has been done. In the principal case the Supreme Court finally settles the question by a decision which is sound on principle and is supported by the weight of authority. *Lebanon National Bank* v. *Karmany*, 98 Pa. St. 65; *First National Bank of Dorchester* v. *Smith*, 36 Neb. 199, 54 N. W. 254.

WITNESSES — COMPETENCY IN GENERAL — EXCEPTIONS TO DISABILITY OF HUSBAND AND WIFE. — In a prosecution under a statute against a husband for living on the earnings of his wife's prostitution, the wife was tendered by the prosecution to testify against her husband. *Held*, that she could not be admitted as a witness. *Director of Public Prosecutions* v. *Blady*, 28 T. L. R. 193 (Eng., K. B. D., Jan. 18, 1912). See NOTES, p. 658.

WITNESSES — COMPETENCY IN GENERAL — PRIVILEGE OF HUSBAND OR WIFE WHERE INCOMPETENCY REMOVED BY STATUTE. — A statute provided that in the case of certain offenses, a husband or wife might be called to testify for or against the other without the consent of the party charged. *Held*, that such a witness cannot be compelled to give evidence against his will. *Leach* v. *Director of Public Prosecutions*, 132 L. T. J. 416 (Eng., H. L., Feb. 26, 1912). See NOTES, p. 658.